EQUITY: JURISDICTION TO PREVENT A MULTIPLICITY OF SUITS.—A corporation represented to numerous persons that if each would buy a share of its stock, it would extend him credit on his purchases of goods from the corporation. The representation was made individually to each person; and each in reliance thereon gave his note in part payment for a share of stock. The corporation then refused to extend further credit. At maturity the notes were transferred for collection, and actions were begun on some of them. Assuming that each maker has a cause of action to have his note cancelled for fraud, will equity, on petition of the makers, take jurisdiction to prevent a multiplicity of suits, enjoining the actions begun and ordering all the notes to be delivered up and cancelled? It was held in *Noroian v. Bennett*[1] that these facts do not present a case of equitable jurisdiction.

The prevention of a multiplicity of suits has been said to be a "very favorite object" with a court of equity.[2] Equity consolidates such suits for two reasons: to protect the public interest in the administration of justice by preventing the clogging of court calendars, and to protect parties from being ruined by costs. But every party has a right to have the issues of his case presented squarely and without confusion; and if the issues of law and fact are not the same in each case, consolidation not only does an injustice to each party by clouding the issues of his case, but it serves no purpose, for, if each party must present different evidence, the consolidated proceeding becomes single only in name and remains multiple in fact, resulting in confusion at the trial.

Bearing in mind the purpose to be served, it would seem that a court of equity should be allowed to consolidate a number of suits, and thus expedite justice, whenever the simplicity of the issues can be preserved without slurring over the right of each party to a full hearing of his cause. Accordingly, Pomeroy states the rule to be, that equity will take jurisdiction to prevent a multiplicity of suits by one party against many or by many against one, where there is a community of interest among the many merely in the questions of law and fact involved.[3] This rule has been, however, the storm center of much controversy, and cannot be said to be firmly established. It was undoubtedly the early rule in equity that before a multitude of suits could be heard as one there must exist among the various claimants either some common title or a community of right or of interest in the subject-matter. The common cases were suits between landlord and tenants and between parson and parishioners.[4] It is possible that

[1] (February 24, 1919) 57 Cal. Dec. 238, reversing 26 Cal. App. Dec. 51.

[2] Per Chancellor Kent in Brinkerhoff v. Brown (1822) 6 Johns. Ch. 136, 151.

[3] 1 Pomeroy, Equity Jurisprudence, § 269.

[4] Adams, Equity, 199, 200.

the limitation thus laid down by the early cases resulted from an imperfect perception of the principle involved, and a consequent attempt to define the right by enumerating the cases in which it existed. At any rate, the rule was modified in England at a comparatively early date,[5] and is certainly not the English rule today.[6] But it is asserted in all its early rigor by many American courts which deny the correctness of Pomeroy's statement.[7]

Pomeroy's rule has the equitable quality of resting, as respects its application, in the discretion of the judge.[8] The rigid rule insisted upon by some courts abolishes discretion. It creates the paradoxical situation wherein a judge may be forced to apply an equitable rule which will produce an inequitable result.[9] The cases which attack Pomeroy are remarkable for their lack of clear theoretical reasoning. They consist largely of assertions and of citations of authority. Their chief theoretical argument is that the sum of many causes of action at law, each containing no element of equitable jurisdiction, can by no possible means equal an equitable cause of action.[10] But this is only another way of saying that the avoidance of a multiplicity of suits is not of itself a ground of equitable jurisdiction, which is the point in dispute. Sometimes courts fail utterly to discern that principle of discretionary application[11] which is the basis of all equitable

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[5] Mayor of York v. Pilkington (1737) 1 Atk. 282, 26 Eng. Rep. R. 180; City of London v. Perkins (1734) 3 Brown's Parliament Cas. 602, 1 Eng. Rep. R. 1524.

[6] Sheffield Water Works v. Yeomans (1866) L. R. 2 Ch. Ap. 8.

[7] Tribette v. I. C. Ry. Co. (1892) 70 Miss. 182, 12 So. 32, 19 L. R. A. 660, 35 Am. St. Rep. 642, 2 Ames Cas. Eq. Jurisd. 74; Turner v. City of Mobile (1902) 135 Ala. 73, 33 So. 132; Vandalia Coal Co. v. Lawson (1909) 43 Ind. App. 226, 87 N. E. 47; Roanoake Guano Co. v. Saunders (1911) 173 Ala. 175, 56 So. 198; Southern Steel Co. v. Hopkins (1911) 174 Ala. 465, 57 So. 11; Watson v. Huntington (1914) 215 F. 472; and Hamilton v. Ala. Power Co. (1915) 195 Ala. 438, 70 So. 737, are the more recent important cases.

[8] What Mr. Justice Story has said with respect to injunctions might well be said of this class of cases also: "Courts of equity constantly decline to lay down any rule which shall limit their power and discretion as to the particular cases in which such injunctions shall be granted or withheld. And there is wisdom in this course, for it is impossible to foresee all the exigencies of society which may require their aid and assistance to protect rights and redress wrongs." Story, Equity Jurisprudence, (14th ed.) § 1293.

[9] It has been said that one result of the amalgamation of law and equity has been to confuse legal and equitable rules in respect to the manner of their application, and to create a tendency to apply the latter as rigidly as the former, with as little regard for the equities of the particular case. Pound, The Decadence of Equity, 5 Columbia Law Review, 20.

[10] Cf. Turner v. City of Mobile, supra, n. 7.

[11] Cf. the words of Lord Eldon: "The doctrines of this Court ought to be as well settled and made as uniform almost as those of the common law, laying down fixed principles, but taking care that they are to be applied according to the circumstances of each case." Gee v. Pritchard (1818) 2 Swanst. 402, 36 Eng. Rep. R. 670. See also the article by Dean Pound cited supra, n. 9.

rules. The rule "must be of universal application", says a leading case, "and strange results might flow from its adoption."[12] The court illustrates by showing the confusion which would result from an attempt to consolidate a hundred actions arising out of a train wreck. There, plainly, separate proof would be required by each claimant to establish the fact and extent of his injury, and the rule would require the judge to dismiss the bill.

The situation was similar in the principal case. There were as many different misrepresentations as there were parties defrauded; and each misrepresentation, each reliance thereon, and the reasonability of each reliance, would have to be proved by separate witnesses. It would be almost impossible to secure justice to each party in such a complicated proceeding, and the court was clearly right in refusing to allow the suits to be consolidated.[13]

A bill will lie, under the Pomeroy doctrine, not only on the petition of the single party by or against whom the numerous suits are commenced, but also on the petition of the numerous parties who are opposed to him. The obvious difference between these cases is, that only in the former is the petitioner affected by the multiplicity complained of. This has moved some courts to deny the bill in cases of the second class.[14] On principle, however, equity's power to avoid a multiplicity of suits should not be restricted to cases where the party exposed thereto complains.[15]

So also, under the general doctrine, the party or parties seeking to avoid the multiplicity may be either plaintiff or defendant in the numerous suits.[16] The California Codes[17] provide, as a means of avoiding a multiplicity of actions, only the method of injunction. No case, except the principal case, seems to have arisen in which the court has applied the general equitable doctrine to the situation where a number of plaintiffs seek to join in

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[12] Tribette v. I. C. Ry. Co., supra, n. 7.

[13] In Hightower v. Ry. Co. (1904) 83 Miss. 708, 36 So. 82, fifty-seven persons joined to cancel notes given by them in reliance upon one single misrepresentation. Here, since there was the same fact to be proved in each case, it was possible to preserve the simplicity of the issues.

[14] Thomas v. Canning Co. (1899) 34 C. C. A. 428, 92 Fed. 422; Scottish Union Ins. Co. v. Mohlman (1896) 73 Fed. 66.

[15] (a) The public interest in the prompt administration of justice is one of the chief reasons for any bill to avoid multiplicity of suits, and it is immaterial in this regard which side brings the bill. (b) It frequently happens that the complainants must enforce their rights in one suit or not at all as in cases where the claim of, or against, each is less than the cost of an individual suit. Surely this is as cogent an equity as the fact of excessive costs to the single party involved in the numerous suits. Smith v. Bank of N. E. (1898) 69 N. H. 54, 45 Atl. 1082.

[16] Cf. cases cited Pomeroy, Equity Jurisprudence § 269 n.

[17] Cal. Civ. Code §§ 3422, 3423, Code Civ. Proc. § 526.

equity to avoid muitiplicity. Early California decisions adhere to the rigid common law rules of joinder.[18]

Equity will not take jurisdiction to prevent a multiplicity of suits when the parties complaining have no prior existing cause of action or defense, legal or equitable.[19] On the other hand, if the numerous suits are baseless,[20] or are the result of conspiracy or bad faith, a bill will lie to enjoin them.[21]

The principal case misinterprets the Pomeroy doctrine in one respect. It considers Pomeroy's phrase "a community of interest in the questions of law and fact" to refer to cases wherein a single fact is decisive of the claim of all the parties. But the court itself quotes his statement that the jurisdiction exists "where the individual claims were not only legally separate, but were separate in time, and each arose from an entirely separate and distinct transaction." The true criterion is rather that set forth by Mr. Justice Peckham: "Each case . . . . must, as we think, be decided upon its own merits, and upon a survey of the real and substantial convenience of all parties, the adequacy of the legal remedy, the situations of the different parties, the points to be contested and the result which would follow if jurisdiction should be assumed or denied; these various matters being factors to be taken into consideration upon the question of equitable jurisdiction on this ground, and whether within reasonable and fair grounds the suit is calculated to be in truth one which will practically prevent a multiplicity of litigation and will be an actual convenience to all parties, and will not unreasonably overlook or obstruct the material interests of any."[22]

A. R. R.

EVIDENCE: CORROBORATION OF TESTIMONY OF AN ACCOMPLICE.—In People v. Tobin [1] the Supreme Court again calls attention to the ambiguity of section 1111 of the Penal Code requiring the testimony of an accomplice to be corroborated by "such other evidence as shall tend to connect the defendant with the commission of the offense; and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof." The decision is based on two early California cases decided under entirely different statutes and therefore hardly

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[18] Barham v. Hostetter (1885) 67 Cal. 272; Foreman v. Boyle (1891) 88 Cal. 290, 26 Pac. 94; Guerkink v. Petaluma (1896) 112 Cal. 306, 44 Pac. 570. But see Hillman v. Newington (1880) 57 Cal. 56.

[19] Ins. Co. v. Hoover Co. (1909) 173 Fed. 888.

[20] I. C. Ry. Co. v. Baker (1913) 155 Ky. 512, 159 S. W. 1169; Jordan v. Telegraph Co. (1904) 69 Kan. 140, 76 Pac. 396.

[21] S. P. Co. v. Robinson (1901) 132 Cal. 408, 64 Pac. 572.

[22] Hale v. Allinson (1902) 188 U. S. 56, 47 L. Ed. 380, 23 Sup. Ct. Rep. 244.

[1] (Dec. 6, 1918) 27 Cal. Dec. 768.